

## **New Jersey Freshwater Wetlands Mitigation Council Meeting**

December 5, 2019

A regular meeting of the Wetlands Mitigation Council was held on December 5, 2019, at the NJDEP Offices located at 501 East State Street in Trenton, NJ.

COUNCIL MEMBERS PRESENT: Dr. Lenore Tedesco (Chair), Mark Renna, Bryon DuBois (by phone), Susan Lockwood

STAFF MEMBERS PRESENT: DAG Kristina Miles, Jill Aspinwall, Kim Springer, Devon Blair, Lauren Zarrillo

Dr. Tedesco called the meeting to order at 9:32 am and stated that public notice for this meeting was given to the Secretary of State's office and written notice was sent to the following newspapers: The Newark Star Ledger/Trenton Times, The Camden Courier Post, and the Atlantic City Press on November 13, 2019.

A roll call attendance was taken:

Dr. Tedesco- Present

Ms. Rocca- Absent

Mr. Renna- Present

Mr. Orton- Absent

Mr. DuBois- Present- via phone

Ms. Lockwood- Present

### **Review and decision regarding the September 19, 2019 Council meeting minutes.**

Ms. Lockwood made a motion to approve the September 19, 2019 Council meeting minutes with recommended changes.

Ms. Lockwood recommended one change to the minutes to correct a typographical error. On page 2, the sentence should read "Ms. Tedesco stated that we should discuss the Liberty State Park issue first, as that is less of a risk to the Council."

Ms. Aspinwall stated that she would make the necessary change.

Ms. Lockwood moved to approve the minutes.

Mr. Renna seconded the motion to approve the September 19, 2019 Council meeting minutes with the recommended changes.

A roll call vote was taken:

Mr. Renna- Yes

Ms. Lockwood- Yes

Ms. Rocca- Absent

Mr. DuBois- Yes

Dr. Orton- Absent  
Dr. Tedesco- Yes

All Council members present voted in favor of approving the September 19, 2019 meeting minutes.

Ms. Aspinwall stated that she would amend the meeting minutes from September 19, 2019 meeting.

### **Update on the Mitigation Fund**

Ms. Aspinwall presented an update on the Mitigation Fund. Ms. Aspinwall stated that as of November 19, 2019, the Mitigation Fund balance is \$3,895,884.90. There were two expenditures during this reporting period: \$57,400.00 for Kittatinny in June and \$135,454.41 for Bloomfield in September. There were two deposits during this reporting period: \$4,026.96 from Donald Burke and \$30,000.00 from Eldad Shaulav.

Ms. Aspinwall provided an update for each of the approved projects that are still ongoing. A total of \$2,770,900.56 has been allocated to approved projects, leaving a balance of \$1,124,984.34 of non-allocated funds. The total interest earned on the account is \$305,088.38.

Ms. Aspinwall stated what Cadwalader Park is working to finalize their project. There were a few items left out of Cadwalader Park's final draft documentation that are being waited on to close out the project. Ms. Aspinwall stated that she gave Cadwalader Park a two week deadline for the missing final report to be submitted.

Mr. Renna asked what would happen to remaining funds if Cadwalader Park does not submit the final report.

Ms. Aspinwall stated that the funds would return to the Council.

Ms. Aspinwall stated that Bloomfield is still under construction and the project is off schedule. Planting was due to be completed but they have not begun yet because the original contractor was fired by the township. Bloomfield is also behind in submitting its reports, as the first two submitted need to be revised before Council staff can review them. Ms. Aspinwall stated she is unable to review the reports out of order.

Mr. Renna asked if Ms. Aspinwall could review out of order due to the project's circumstance and make a modification.

Ms. Aspinwall stated she can review report narratives, but since the financial section of the reports must match and carry through the correct numbers from the previous report, the financial section cannot be reviewed out of order. Further, Ms. Aspinwall explained there are typically a lot of expenses due to the construction phase.

With respect to the Mitigation Fund handout, Mr. Renna asked if the wetlands created/ enhanced or restored remaining under Liberty State Park is correct. Ms. Aspinwall stated that the acreage listed is correct.

**Public Comment:**

Mr. Tim Dillingham, from the American Littoral Society, introduced himself and stated he works along the Delaware Bayshore restoring habitat, then described some of the previous projects American Littoral Society has undertaken. Mr. Dillingham spoke about a restoration project proposed for the mouth of Maurice River; the area has a lot of vulnerability and continues to suffer at the western point, which provided shelter to numerous bivalves, as there were lots of tidal wetlands lost. American Littoral Society has been awarded a grant from National Fish and Wildlife Service for a natural solution to address the problems and they are actively growing oysters and creating still water areas.

Mr. Dillingham asked if the Council would consider funding a project in that area. Mr. Dillingham would like to move forward with the project, is looking for additional funding, and asked what the next steps would be for potential funding for this project.

A discussion then ensued between Council members and Council staff. Dr. Tedesco asked to clarify that the Maurice River mouth is in the Lower Delaware region.

Ms. Aspinwall confirmed it is and explained the Fund's interest earned could possibly be used. If the council was interested, then this general topic should be placed on the next meeting's agenda which would be in February 2020.

Dr. Tedesco asked what the Fund's interest could be used for. Ms. Aspinwall stated that the interest earned is the Council's financial assurance, but the Council could use a portion of the interest earned to fund a project if the Council wished.

Ms. Lockwood explained to Mr. Dillingham that the Council has five regions and has specific funds allocated into each region. At present, the Council does not have any projects or money in the Lower Delaware region. The Council generally will put out a Request for Proposal, or RFP in those regions where the Council has accepted monetary contributions. Typically, in those regions where the Council has not accepted monetary contributions, the Council would not put out a RFP. However, given that there is money in the Fund that comes from interest, there is a possibility to use those funds to fund a project in an area where monetary contributions have not been received. The other option is to collect the interest money to a certain amount and then use it in specific areas.

Mr. Renna explained to Mr. Dillingham that the process to apply for Council funding is available on the NJDEP website. Mr. Renna also noted there is a presentation coming up on the agenda so that may give Mr. Dillingham ideas on what to expect. However, the project must be proposed to the Council first.

Ms. Aspinwall stated that before Mr. Dillingham applies for funds, the Council must first decide if they wish to release a RFP for the project. Ms. Aspinwall explained that first the Council must decide if they are interested in potentially allocating the earned interest towards future projects. If the Council is interested, then the topic as to whether and how to use the earned interest can be placed on the February agenda, and, if, at the February meeting, the Council decides after the discussion that it wants to potentially allocate the earned interest towards a project, then an RFP will be drafted and ultimately released. If the Council does not want to discuss the earned interest at the February meeting or decides against releasing an RFP, then the minutes will reflect the decision and no RFP would be released.

Mr. Dillingham stated that American Littoral Society has lots of documents prepared for the future should the Council be interested.

Ms. Lockwood explained to Mr. Dillingham that there was more flexibility in the past as to how the Council used the money, but since the In-Lieu Fee program was approved by EPA, the Council must follow the ILF monetary allocation processes.

Dr. Tedesco asked if the Council is interested in possibly providing the funds or if the Council would like to find other regions to use it in.

Ms. Aspinwall asked if the Council would be interested in discussing the potential use of the earned interest on the mitigation fund as a topic on the agenda for the February meeting.

Ms. Lockwood stated the Raritan Region took a while to decide and she doesn't want money sitting in the interest but is afraid to break the money into small portions for different projects. The other option is to let the interest grow and have larger amounts to use.

Dr. Tedesco stated the Council would discuss the earned interest issue at the February meeting.

Mr. Dillingham thanked the Council for their time.

Mr. Andy Strauss introduced himself, explained he works on the Bloomfield project and wanted to provide a status on the project. Mr. Strauss provided a history of the project, which is a freshwater wetland urban contaminated industrial site. This was the first time the project has been presented in front of the Council since the approval of the project. Mr. Strauss said Ms. Aspinwall has assisted throughout the project by reviewing the submitted reports and explained that Bloomfield was behind in submittals because the quarters cannot close for reporting purposes until everyone on the project has been paid for that quarter. Mr. Strauss said Bloomfield had submitted the reports for Quarters one and two for 2019, and that Quarter three's report is complete but not submitted yet.

Nick Joanow, Bloomfield Council member, stated he supports the project and the funding of the project. Mr. Joanow explained the town population is growing, and open space and quality of life is important, as is focusing on the floodplains. The current project is a complicated project which the officials all support. The Bloomfield project is anticipated to be completed by spring. Mr.

Joanow said there is a price to pay for abusing wetlands and the Bloomfield Council wants to use this project and the site's previous history as a teaching point for Bloomfield.

Dr. Tedesco thanked Mr. Strauss and Mr. Joanow for coming and giving an update. Dr. Tedesco further explained that the Council relies on contracts and asked that Bloomfield stay on their project schedule as best possible. Mr. Joanow responded that they would remain on track.

Mr. Renna asked about the quarters closing and not matching the Council's quarters. He asked if there were any cashflow problems for the project which may be causing this.

Mr. Strauss explained Bloomfield gives advances and funds are not always available before the quarter closes. The reporting issue is that the Township has to show that everyone was paid in the report.

Mr. Renna asked if the Council should be concerned about this project and the fact this was the largest project that has been funded.

Mr. Strauss explained that the Council should not be worried because there is a new contractor and project plan in progress.

Dr. Tedesco thanked both Mr. Strauss and Mr. Joanow for attending and giving an update on the Bloomfield project.

## **New Business**

### **RFP Proposal Presentation by Kirk Mantay on "Jamesburg Park Conservation Area: Buckelew Bogs & Shekiro Pond-Wetland Enhancement Project"**

Ms. Aspinwall informed the Council that there was only one proposal submitted to the Council's Request for Proposals for projects in the Raritan Area ("Raritan RFP") and the site has already been inspected. Staff comments have been submitted to the applicants with proposed questions. Ms. Aspinwall explained that the purpose for the presentation is for the Council to decide whether the applicants should submit a final proposal pursuant to the Council's RFP process.

Mr. Kirk Mantay thanked the Council for giving them an opportunity to present the project and introduced Brian Cramer from Greenvest to help present the conceptual proposal. Mr. Mantay explained that the area is a Pineland outlier habitat which is on a historic acidic bog habitat. It is very diverse and has a wide variety of species. Mr. Mantay summarized the history of cranberry bogs starting in 1800-1900, and noted that since most cranberry bog sites were levied for water control, storm events would impact the sites. Mr. Mantay discussed the Council funded Jamesburg Park project that was constructed nearby. That project will serve as a good reference site as the site is now mostly Atlantic White Cedar and invasive species.

The proposed project is in Watershed Management Area 9, would be 3.29 mitigation units, and would provide scrub-shrub and emergent species. Mr. Cramer stated the proposed project would clear the invasive species and then plant native species. The project would enhance 9.86 acres and

create proposed habitats of Hardwood Palustrine Scrub-Shrub, Palustrine Emergent, and Palustrine Scrub-Shrub Atlantic White Cedar.

Mr. Mantay and Mr. Cramer then addressed Council staff's comments. First, the staff comments discussed and asked whether the water budget was necessary. Mr. Cramer stated that while the hydrological monitoring was important, he agreed with the staff comments that the full water budget was not needed. Next, Mr. Mantay stated the functional analysis and assessment are proper to ensure value to Council's operation. The last staff comment was on GreenVest's request to waive the 10% retainage requirement; Mr. Mantay said the project proponents are happy to withdraw the waiver request to make sure the project is not burdensome.

Dr. Tedesco thanked both Mr. Mantay and Mr. Cramer for their presentation. Dr. Tedesco stated that she sees how the money for wells would be important, but not necessarily a full water budget.

Ms. Lockwood asked for clarification on the credits and the mix of Scrub-Shrub and Atlantic White Cedar. Mr. Cramer explained there though would be three habitat types, the project would be predominantly emergent with scrub-shrub and Atlantic White Cedar where possible.

Council members and project proponents then discussed the pros and cons of including a functional assessment for the project. Ms. Lockwood stated that a problem with the functional assessment is that it can be set up to generate whatever conclusion you may want. While it is good to demonstrate a project's success, the success should be obvious without a functional assessment. Mr. Renna asked what the functional assessment's requirements were. Mr. Cramer explained it shows the enhancement project is meeting the regulatory mitigation ratios. Ms. Lockwood explained that the functional assessment ranges in value but what is included in the functional assessment can be included in a monitoring report without the assessment. Dr. Tedesco explained it was also part of the delineation. Ms. Aspinwall stated that staff comments did not suggest that they eliminate a functional analysis but be more specific in the analysis. Ms. Lockwood stated again that you can get a functional assessment from the monitoring without doing the assessment. Mr. Mantay explained other states require the functional assessment, as they have previously had trouble with being able to see the project's value without professional review.

Mr. Renna agreed that the 3:1 ratio of the project evaluation seems to be on target in scope of the work, but wanted to know how the proposal took contamination into account. Mr. Cramer stated they do the project evaluation first to determine if pesticides were present; though there is no reason to expect pesticides on this site due to its history, there is always a possibility pesticide will be present, so it is important to evaluate first. Mr. Renna asked what would happen if the pesticides are found and also inquired as to whether the Council would lose money if the project proponents decided not to follow through with the project. Ms. Aspinwall explained that this type of uncertainty is why there are typically milestones for the project, wherein the Council pays for reports and if the reports are favorable, the Council pays the project proponents for the next milestone.

Mr. Renna asked if there would be fencing for the project. Mr. Cramer stated there would be deer fencing around the site and goose fencing during the beginning of planting.

Mr. Renna asked for an explanation of the project's proposed vegetative hand pulling, since in his experience, people are not undertaking hand pulling anymore. Mr. Cramer stated they work with Greenvest who does hand pulling and has done it on previous sites.

Mr. Renna asked if they needed to post bonds for the site. Ms. Aspinwall stated that the County is not required to post bonds.

Dr. Tedesco asked if the Council had any other questions. No other questions were asked

Ms. Lockwood moved to approve conceptual proposal and move forward with the final proposal. Mr. Renna seconded the motion to approve conceptual proposal and move forward with the final proposal.

A roll call vote was taken:

Mr. Renna- Yes

Ms. Lockwood- Yes

Ms. Rocca- Absent

Mr. DuBois- Yes

Dr. Orton- Absent

Dr. Tedesco- Yes

All Council members present voted, all in favor of approving the conceptual proposal and asking the project proponent to move forward with the final proposal.

Ms. Aspinwall stated that she would discuss next steps with Mr. Kirk Mantay and Mr. Brian Cramer.

#### **Update by John King, NJDEP on the Liberty State Park Project.**

Mr. John King, from the Office of Natural Resource Restoration, stated he did not have a presentation; however he was there to provide an update to the Council on the Liberty State Park Project NJDEP was working on with the U.S. Army Corps of Engineers. Mr. King stated that they expect the Liberty State Park Project to go into construction late 2021.

Dr. Tedesco asked what stage the project is at right now. Mr. King explained they are redesigning Phase I and will have 30% plans ready by May 2020 and full plans by 2021.

Mr. Renna explained that the Council asked the Army Corps of Engineers to attend the Council meeting to answer questions the Council may have and asked why the Corps staff were not present. Mr. King explained that the project is contracted with the Army Corps of Engineers but the NJDEP is the project manager. Mr. King stated that the Council was asked if they had any questions for the Corps and did not receive any. As the project manager, Mr. King believed he is able to answer any questions for the Corps and if not, he would get answers from them.

Mr. Renna asked how much money the Army Corps of Engineers was contributing to the project, to which Mr. King answered zero.

When Mr. Renna asked which Corps staff members were working with NJDEP on the project, Mr. King stated Lisa Barone. Mr. Renna stated, in his opinion, Ms. Barone would be more than happy talk about this project as it is highlighted on the Corps website. Mr. King stated he does not mind bringing the Corps in, but he would be paying the Corps for their time and the money under contract from the Council is for construction only, so the money would be being used for the wrong thing.

Mr. Renna asked about the status of the permits for the project. Mr. King explained that the project was at 30% design for the pedestrian bridges, restrooms, and other project elements. Since it has been a long time since data was collected, the Corps has to acquire a new water budget and new delineation.

Mr. King then asked if there were any questions for the Corps. Dr. Tedesco stated an email was sent out to the council by Ms. Aspinwall asking the Council members if anyone had questions for the Corps.

Ms. Aspinwall stated she received one email back stating there were no questions for the Corps.

### **Council Comment**

Mr. Renna made a motion for the interest funds to be used to fund a project. The motion was not seconded. Dr. Tedesco stated that since there was no second to the motion, the topic will be discussed at the February 2020 meeting.

Ms. Lockwood stated NJ Conference for Open Space will be held on March 20, 2020. Anyone who is interested is welcome and that early registration for the conference is open now. The conference will be held in New Brunswick.

### **Public Comment**

No Public Comment

### **2020 Proposed Council Meeting Dates**

Ms. Aspinwall stated that the following meeting dates were tentatively scheduled for the third Thursday of every other month:

February 20, 2020

April 16, 2020

June 18, 2020

August 20, 2020

October 15, 2020

December 17, 2020

The first tentative meeting will be February 20, 2020. There were no concerns over the 2020 schedule of meetings.

**Adjourn.**

Ms. Lockwood moved to adjourn the meeting.

Mr. Renna seconded the motion to adjourn the meeting.

A roll call vote was taken:

Mr. Renna- Yes

Ms. Lockwood- Yes

Ms. Rocca- Absent

Mr. DuBois- Yes

Dr. Orton- Absent

Dr. Tedesco- Yes

Meeting was adjourned at 10:48 am.

The next Wetland Mitigation Council meeting has been tentatively scheduled for February 20, 2020.